

**SETTLEMENT AGREEMENT and RELEASE**

This *Settlement Agreement and Release* ("Agreement") is made and entered into between the following individuals: William Bellamy, Adam Covington, Vernon McKinnon, Michael Meginnis, Troy Sorrell, and Michael Williams (collectively referred to as the "Plaintiffs" in this Agreement) and the City of Rockingham, North Carolina (referred to as the "City" in this Agreement), a municipal corporation formed pursuant to Chapter 160A of the North Carolina General Statutes.

This Agreement is made with respect to the following facts:

A. With the exception of Michael Williams, who is a former employee of the City, the Plaintiffs are all currently employed by the City as firefighters.

B. On or about May 23, 2012, the Plaintiffs filed a lawsuit, styled *Bellamy, et al. v. the City of Rockingham*, Civil Action No. 1:12-CV-618, which is currently pending in the United States District Court for the Middle District of North Carolina.

C. The lawsuit alleges, *inter alia*, that the City of Rockingham violated the Fair Labor Standards Act ("FLSA") by underpaying the Plaintiffs and by retaliating against Plaintiffs for their participation in a prior wage and hour lawsuit against the City (the "*Barber* lawsuit"). The Plaintiffs also included claims under the North Carolina Constitution, and a contract claim asserting that the City breached the settlement agreement in the *Barber* lawsuit. The City denies these allegations.

D. A mediated settlement conference was conducted on December 3, 2012 in Rockingham. During the mediated settlement conference, the parties agreed to a full and final settlement of all issues in the case. The terms of the settlement are as follows:

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1. Payments and other consideration provided by the City. In exchange for the Plaintiffs' release of any real or potential claims and their other promises contained in this Agreement, the City shall pay or make the following concessions to the Plaintiffs:

a. For all Plaintiffs except for Michael Williams, the City shall pay them for 8 hours of their regular rate of hourly pay (consisting of their current bi-weekly base salary divided by 106 hours) for each holiday recognized by the City under Section 1 of Article IX of the City's Personnel Ordinance that occurred during the time period beginning January 1, 2010 through December 3, 2012.

b. For Plaintiff Michael Williams, the City shall pay him for 8 hours of his regular rate of hourly pay (consisting of his final bi-weekly base salary divided by 106 hours) for each holiday recognized under the City's Personnel Ordinance that occurred between January 1, 2010 through August 31, 2010.

c. Beginning December 4, 2012, the City agrees to modify its pay and leave plan for Plaintiffs and all other then-employed regular, full-time fire fighters in the following manners:

i. The City will pay the fire fighters "holiday pay" consisting of 8 hours of their regular rate of hourly pay (consisting of their current bi-weekly base salary divided by 106 hours) for each holiday recognized under the City's Personnel Ordinance, regardless of whether such individuals actually work or do not work on such holiday(s).

ii. All regular, full-time fire fighters currently employed by City, including Plaintiffs, will not have a vacation request denied by the City based on a holiday occurring within that vacation period, provided that: (1) such vacation consists of at least four complete shifts of the employee's then-current work schedule; (2) the employee recruits another qualified, full-time or part-time fire fighter employed by the City, subject to the approval of the Fire Chief

within five business days after being informed of same (said approval shall not be unreasonably withheld), to work on such holiday in his or her place; and (3) the employee gives the City at least 30 days' prior written notice of such vacation. Provided that those conditions are met, each such employee on vacation shall also be paid for such holiday in accordance with paragraph 1(c)(i) above. It is expressly understood and agreed that the conditions of this paragraph shall only apply to situations in which a holiday falls within an extended vacation period.

iii. As a material condition of this settlement: (1) the City agrees that the current Rockingham City Manager, Fire Chief and non-elected officials will not recommend to the Rockingham City Council any material changes to the current method of paying wages to the City's regular, full-time fire fighter employees, unless required by a change of federal or state law or administrative regulation, interpretation or other directive by the Department of Labor; (2) Plaintiffs agree that they shall not institute any further challenges to the City's pay plan as long as such method (including the modifications set forth in this Agreement) remains in effect; and (3) Plaintiffs agree that such payment method, including but not limited to the above-mentioned holiday pay arrangement and the City's current method of compensating employed fire fighters with a uniform level of "call back" pay, does not violate the Fair Labor Standards Act or any other federal or state law.

c. The City agrees to reimburse Plaintiffs for a portion of the litigation expenses incurred in this lawsuit by paying to "Edelstein and Payne" one or more checks for attorneys' fees and expenses in the total sum of \$10,000.00, with \$9,420.36 of such amount being designated as attorneys' fees and \$579.64 being designated as expenses, subject to an IRS Form(s) 1099.

2. **Parties to bear own litigation expenses and costs.** Except as set forth above, each of the parties shall bear their own attorneys' fees and costs of this litigation and of the above-mentioned mediated settlement conference.

3. **Release and finality of litigation.** In exchange for the City's promises and other consideration set forth in this Agreement, the Plaintiffs agree to release, acquit and forever discharge the City and its current or former elected and appointed officials, agents, insurers, successors and assigns, from any and all claims related to the subject matter of this lawsuit (including all amended complaints). The Plaintiffs further agree that this settlement and the dismissal of this lawsuit shall have both issue and claim preclusive effect and shall be a complete and final bar to any future challenges by the Plaintiffs to the City's current pay plan for its fire fighters, subject to, and limited by, the terms of Paragraph 1(c)(iii) above.

4. **Court approval.** The Plaintiffs agree that this Settlement Agreement will be submitted to the Court for approval and Plaintiffs shall cooperate with the City in obtaining such approval. Within 30 days after the settlement has been approved by the Court, the above-mentioned monetary aspects of this settlement shall be paid, and Plaintiffs shall file with the Court a joint stipulation of voluntary dismissal with prejudice of this action.

5. **No Admission of Liability.** The parties specifically agree that this Agreement is not intended as or to be construed as an admission of liability by any party and that neither party shall be considered a prevailing party for any purpose.

6. **Complete Agreement.** This Agreement constitutes the full and complete understanding and agreement of the parties with respect to all subjects addressed herein and supersedes and replaces any and all prior negotiations and agreements, proposed or otherwise, whether written or oral. There are no other agreements other than those set forth herein, and no

amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all parties.

7. Choice of Law. This Agreement shall be construed according to North Carolina law.

(SIGNATURE PAGES TO FOLLOW)

William J. Bellamy  
William Bellamy

Adam Covington  
Adam Covington

Vernon McKinnon  
Vernon McKinnon

Michael Meginnis  
Michael Meginnis

Troy Sorrell  
Troy Sorrell

Michael Williams  
Michael Williams

CITY OF ROCKINGHAM

By: MONTY CRUMP  
City Manager